

TRIBAL ISSUES

The following compilation is a summary of key hot topics for EPA's Tribal Program, including those within OITA's American Indian Environmental Office (AIEO) as well as specific EPA media offices and regions.

TRIBAL CONSULTATION AND COORDINATION

EPA, similar to other federal agencies, consults with tribes on a government-to-government basis prior to the taking of actions or decisions which may affect them. EPA's Consultation Policy was established in 1984 and it is based on Executive Order 13175. It defines when and how consultation should take place. Treaties between the United States and tribes are part of federal law. The treaties cover a wide variety of subjects, including rights reserved by tribes relating to natural resources, such as the right to hunt, fish, and gather both on land ceded, or given up, by tribes, and on land retained by tribes. EPA developed a Tribal Treaty Rights Guidance to complement EPA's Consultation Policy by outlining a process to guide treaty rights discussions with tribes during consultations. Tribes may raise both consultation and treaty rights issues regarding specific EPA actions that may affect tribal interests. Lead Office: OITA.

INDIAN ENVIRONMENTAL GENERAL ASSISTANCE PROGRAM FUNDING

As the single largest EPA tribal grant program, issues surrounding funding levels and implementation of the Indian Environmental General Assistance Program (GAP), are often raised by tribes. The GAP program allocates approximately \$65M annually to over 530 tribes and intertribal consortia to help them plan, develop, and establish the capacity to administer environmental protection programs. EPA's current framework for tribal capacity development includes tools, such as EPA/Tribal Environmental Plans (ETEPs), to focus on progress achieving shared priorities of federal and tribal governments, resulting in over 500 ETEPs in place today. Guidance for the GAP grant program is currently under review including performance management to better achieve and demonstrate program success. Lead Office: OITA.

TRIBAL IMPLEMENTATION OF FEDERAL ENVIRONMENTAL PROGRAMS – TREATMENT AS A STATE

Several federal environmental laws authorize EPA to treat eligible federally recognized Indian tribes as a state (TAS) for the purpose of implementing and managing certain environmental programs and functions, and receiving eligibility for certain grant funding. Tribes must apply for and receive EPA approval for each specific program or function. EPA regional and program offices support tribes in developing program capacity and applying for TAS. Despite an increased number of tribal TAS approvals in recent years, EPA continues to directly implement the overwhelming majority (estimated 99%) of federal environmental programs in Indian country. Lead Office: OITA.

MCGIRT V. OKLAHOMA SUPREME COURT CASE AND SAFETEA APPROVAL

The U.S. Supreme Court on July 9, 2020, determined that the Muscogee Creek Reservation in eastern Oklahoma had never been disestablished by Congress, and thus a wide area remains an Indian reservation, and thus Indian country, to this day. Oklahoma Governor Stitt requested approval under Section 10211(a) of the Safe, Accountable, Flexible, Efficient Transportation Act (SAFETEA) to administer, in certain areas of Indian country, the State's environmental regulatory programs that were previously approved by EPA to apply outside of Indian country. EPA held consultations with Tribal Nations, who were generally strongly opposed to approval. On October 1, 2020, EPA Administrator Wheeler approved the State's request. Lead Offices: Administrator's Office, OITA, Region 6.

EPA DIRECT IMPLEMENTATION IN INDIAN COUNTRY

EPA implements federal environmental laws for the vast majority of Indian country, but has not consistently tracked or evaluated its direct implementation (DI) activities to protect the environment and public health in Indian country. EPA has worked for several years to improve understanding of EPA's DI work across programs, and an OITA/OCIR-led work group is collaborating with program offices to articulate tribal DI goals, develop metrics and assess performance. This work is taking place as part of a broader project to evaluate state and local implementation of federal environmental program performance. Lead Office: OITA.

COVID-19

Tribes have been deeply affected by the COVID-19 public health emergency. Many tribal governments and staff continue to be closed more than six months after the pandemic first started, further complicating the work done by EPA and the tribal governments to protect human health and the environment. EPA took several actions to understand and discuss the impacts of the pandemic on tribes. OITA issued guidelines designed to assist EPA offices and regions when conducting coordination and consultation during the public health emergency. Other program offices issued national guidance that impacted work in Indian country, and delivered webinars to tribal stakeholders to provide technical assistance on key issues, e.g., Indoor Air and COVID-19. Lead Office: OITA.

EPA is engaging with the Navajo Nation Water Access Coordination Group, led by the Indian Health Service and the Navajo Nation, to provide access to drinking water on the Navajo Nation during the pandemic. EPA also worked with the water sector and FEMA to coordinate shipments of over 3 million reusable cloth masks to drinking water and wastewater utilities, including tribal utilities, upon request. Administrator Wheeler sent a letter to tribal leaders supporting the Department of Homeland Security's designation of water and wastewater operators as critical infrastructure workers. EPA developed and published the Pandemic Incident Action Checklist and followed up with a tribal webinar to support use of the checklist and resources available from tribal organizations and federal agencies. EPA worked with other federal agencies involved in the Tribal Infrastructure Task Force to compile and publish a list of tribal water utility resources for the COVID-19. Lead Office: OW

TRIBAL WATER INFRASTRUCTURE AND TECHNICAL ASSISTANCE NEEDS

EPA provides federal assistance for tribal drinking water infrastructure needs through the Drinking Water Infrastructure Grant – Tribal Set-Aside (DWIG_TSA) program. These funds are used for planning and construction expenditures to address the most significant threats to public health at community water systems and non-profit, non-community water systems that serve a tribal population. EPA provides federal assistance to protect public health and the environment by improving wastewater sanitation facilities for tribes through the Clean Water Indian Set Aside (CWISA) program. Activities supported through these grants include the planning, design, and construction wastewater treatment plant facilities that serve federally recognized Indian tribes, Alaska Native Villages, and certain tribes in Oklahoma. From FY16 through FY20, EPA has provided over \$107 million through the DWIG-TSA program and almost \$159 million through the CWISA program. EPA provides training and technical assistance to support operation and maintenance (O&M) at tribal utilities. EPA is also providing approximately \$875,000 in FY18 and FY19 funds for infrastructure and direct technical assistance to tribes through the Small and Disadvantaged Communities grant program under the Water Infrastructure Improvements for the Nation (WIIN) Act. Through the Federal Infrastructure Task Force (ITF), EPA is also collaborating with IHS, DOI, HUD and USDA to seek efficiencies in federal actions around implementation of federal infrastructure programs, infrastructure financing, and promoting sustainable practices. Lead Office: OW.

LEAD IN DRINKING WATER

EPA works closely with tribal water systems, as part of the Agency's direct implementation responsibilities under the Safe Drinking Water Act, to implement the Lead and Copper Rule and support tribal compliance. EPA is implementing the WIIN Act's Lead Testing in School and Child Care Program Drinking Water grant, which includes \$4.3 million in funding for tribal consortia, and the Reducing Lead in Drinking Water grant program, which includes a \$3 million tribal

allotment to fund projects implemented through interagency agreements with the Indian Health Service (IHS). Lead Office: OW.

CLEAN WATER ACT SECTION 106 PROGRAM TRIBAL GUIDANCE REVISION

The CWA Section 106 Program provides funding to 280 tribes to support the development and implementation of their water pollution control programs. The Section 106 Program allocates approximately \$25 million annually for tribes and is the largest media specific tribal grant program. Funds are allocated to the regions by formula, and the regions award grants based on negotiated work plans. Funding is used by tribes for ambient water quality monitoring and assessment and water quality standards development and implementation. The current guidance for the Section 106 Tribal Program was developed in 2007 and it is being revised to reflect advancements in the tribal water programs over the last 14 years. Lead Office: OW.

TRANSBOUNDARY ENVIRONMENTAL AND PUBLIC HEALTH ISSUES

Tribes located near the U.S.-Canada border, including Alaska, have raised issues associated with a wide array of transboundary issues, including mineral extraction, land use planning, agriculture, energy production, dams, and the transportation, storage, and disposal of material and fuel. These activities can impact the quality of the air, land, and water, fish passage, tourism, commercial fishing, and tribal subsistence hunting, fishing and gathering. Regulatory issues can include environmental reviews, permitting, treaties, and compliance. Lead Offices: Region 1, Region 2, Region 8, and Region 10, with OITA.

Tribes located near the U.S.-Mexico Border are affected by transboundary issues, including water and wastewater infrastructure and access, air quality, solid waste, water quality, emergency response, and agricultural concerns. EPA is engaged in addressing transboundary issues through both the U.S, Mexico and Canada Agreement (USMCA) and the Border Program (currently Border 2020). In FY20, EPA and partner agency SEMARNAT worked to draft a new Border Program Framework, Border 2025, which was subject to tribal consultation and is now pending final decisions. Lead Offices: Region 6, Region 9, OITA, with Region 7 as Lead Region for International Coordination.

OTHER SOLID WASTE INCINERATORS

In August 2020, EPA announced proposed amendments to the 2005 New Source Performance Standards and Emissions Guidelines for OSWI units, most of which are owned by small businesses and tribes. When final, this rule will amend the standards for small OSWI units based on additional data obtained since the 2005 final rule. This action proposes to amend rule applicability provisions based on the type of waste being combusted and unit capacity; and to revise standards for small OSWI units, increased testing and monitoring flexibilities, increased recordkeeping and reporting flexibilities so small units with basic designs can demonstrate compliance with the OSWI rule. This action is under a court ordered deadline to be finalized by May 31, 2021. Lead Office: OAR.

OIL AND GAS IN INDIAN COUNTRY

EPA has issued final amendments to streamline the Clean Air Act permitting process for certain sources engaged in oil and natural gas production activities in Indian country. The final amendments to the Federal Implementation Plan (FIP) for True Minor Sources in Indian Country could reduce, by up to 30 days, the time between a source owner/operator's submission of required Endangered Species Act/ National Historic Preservation Act screening documents and beginning construction. This action creates no new requirements and would streamline existing Federal Tribal New Source Review permit application processes. The FIP applies to new and modified true minor sources that are located or expanding in areas of Indian country that are designated as attainment or unclassifiable. The Agency also amended the FIP to extend coverage to the Uintah and Ouray Reservation in Region 8. Lead Office: OAR.

ENBRIDGE ENERGY LINE 5 PIPELINE

The Enbridge Energy Line 5 Pipeline transports various petroleum products through the Upper Peninsula of Michigan, traversing the Straits of Mackinac, and running south through Michigan until crossing into Canada. Tribes have expressed concerns about the presence of the Pipeline in the 1836 Treaty Area and its risk to land and water resources; most notably, tribes are concerned with the segment of the Pipeline which runs along the lakebed of the Straits. Enbridge Energy has proposed to construct a tunnel under the lakebed of the Straits and install a new pipeline within the tunnel. EPA is not responsible for issuing any permits necessary to allow construction for the tunnel, but EPA has an oversight role for delegated permitting authorities under federal environmental law. Region 5 is also involved in general spill response and preparedness planning for that area, and is providing oversight on operational actions Enbridge Energy is required to implement for the entire Lakehead System. Lead Office: Region 5.

GOLD KING MINE

On August 5, 2015, EPA employees and contractors were conducting a CERCLA investigation at the Gold King Mine, an inactive mine near Silverton, Colorado, when approximately three million gallons of metal-laden acid mine water was inadvertently released into nearby Cement Creek. Litigation related to the release is described in an OGC briefing paper. Following the release, an orange-colored plume flowed down the Animas River to the San Juan River and into Lake Powell. Along its route, the plume travelled through the Southern Ute and Ute Mountain Ute Indian Reservations in Colorado, New Mexico, the Navajo Reservation and Utah. EPA has funded more than \$3.5 million in emergency response reimbursements to states, local governments and tribes, more than \$2 million to states and tribes to support water quality monitoring of the Animas and San Juan rivers, and has distributed about \$9 million of funding to states and tribes for projects related to the health of the San Juan River watershed. Lead Office: Region 8, in coordination with Region 9 and OITA.

ABANDONED URANIUM MINES AND THE NAVAJO NATION

Approximately 30 million tons of uranium ore was extracted during mining operations on or near the Navajo Nation from 1944 to 1989. The legacy of these activities on the Navajo Nation includes the presence of 523 abandoned uranium mines (AUMs) and homes/structures built with mine and mill waste. Since early 2000, Region 9 has been working closely with the Navajo Nation to assess and clean up these AUMs and to assess and remediate homes/structures. In September 2020, Region 9 submitted the *Ten-Year Plan: Federal Actions to Address Impacts of Uranium Contamination on the Navajo Nation (2020-2029)* to the OMB. The Plan presents a schedule to complete assessments at 230 AUMs by 2024, select cleanup options and complete designs at 160 AUMs by 2029, and begin cleanup at 110 sites by 2029. EPA has also committed to work with the DOE Defense-Related Uranium Mines (DRUM) Program and the Navajo Nation to conduct assessments at the approximately 300 AUMs that are not presently funded. Lead Office: Region 9.

INDOOR AIR QUALITY

Tribes have identified indoor air quality as one of their top environmental and public health concerns. Asthma, radon, exposure to particulate matter indoors, mold and other indoor air quality problems are pervasive in Tribal homes. EPA works in close partnership with the National Tribal Air Association, other Tribal organizations, and directly with Tribes to provide guidance, training, technical assistance and in the case of radon, grant assistance, to assist Tribes in addressing an array of significant indoor air quality issues. Lead Office: OAR.